1997

Gentry Gamble v. Daniel R. Larsen and Catherine J. Wheeler : Brief of Appellees

Utah Court of Appeals

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IN THE UTAH STATE COURT OF APPEALS

GENTRY GAMBLE	:	**BRIEF OF APPELLEES**
Plaintiff-Appellant,	:	
vs.	:	
DANIEL R. LARSEN and CATHERINE J. WHEELER,	:	Appeal No. 970454-CA
Defendants-Appellees.	:	Priority No. 4

BRIEF OF APPELLEES

APPEAL FROM AN ORDER OF DISMISSAL IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE PAT B. BRIAN, PRESIDING

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JURISDICTION

Appellant Gentry Gamble ("plaintiff") appeals the Findings of Fact, Conclusions of Law and Order of Judge Pat B. Brian entered on June 27, 1997, dismissing plaintiff's Complaint for failure to state a claim upon which relief may be granted. (R. 182-87; see addendum A attached).[1] This Court has jurisdiction pursuant to Utah Code Ann. § 78-2(a)-3(2)(h) (Supp. 1996).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Issue No. 1: Whether the lower court properly concluded that the clear and unequivocal language of the consent to adoption and the adoption decree itself relinquished and

[1] The relevant portions of the lower court record are cited as (R.). The relevant documents from the lower court record have been included in the attached addenda.

terminated all of plaintiff's rights and interests in the adopted children?

Standard of Review: Because the lower court's finding was based solely upon written documents, this Court may examine the documents de novo and determine the facts. In Re Adoption of Infant Anonymous, 760 P.2d 916, 918 (Utah App. 1988).

Issue No. 2: Whether the lower court properly concluded that plaintiff's Complaint fails to state an independent cause of action under Rule 60(b), Utah Rules of Civil Procedure, to set aside the Decree of Adoption on the basis of fraud on the court?

Standard of Review: Because the lower court's finding was based solely on written documents, this Court may examine the documents de novo and determine the facts. In Re Adoption of Infant Anonymous, 760 P.2d 916, 918 (Utah App. 1988).

Issue No. 3: Whether the lower court properly dismissed the case without ruling on whether the matter should be certified to juvenile court?

Standard of Review: A correction of error applies to appellate review of an issue of law. Alvarez v. Galetka, 933 P.2d 987 (Utah 1997).

DETERMINATIVE STATUTES AND RULES

Utah Code Ann. § 78-30-4.15(2) (1995) provides in pertinent part:

> A fraudulent representation is not a defense to strict compliance with the requirements of this chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party.

Utah Code Ann. § 78-30-4.15(3) (1995) provides in pertinent part:

> The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, ... the unmarried biological father has the primary responsibility to protect his own rights in adoptive proceedings and that the burden of fraud must be borne by him.

Utah Code Ann. § 78-30-4.20 (1995) provides:

> A consent or relinquishment is effective when it is signed and may not be revoked.

Utah Code Ann. § 78-30-9 (1990) provides in pertinent part:

> The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it shall enter a final decree of adoption that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the children of the adoptive parent or parents.

Utah Code Ann. § 78-30-11 (1990) provides:

> The birth parents of an adopted child are, from the time the final decree of adoption is entered, released from all parental duties toward and all responsibilities for the adopted child, and have no further rights with regard to that child.

Utah Code Ann. § 78-3a-104 (1996) (Appellant's Brief Addendum G)

Rule 60(b) of the Utah Rules of Civil Procedure provides:

> (b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party of his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to more for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from

> the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1),(2),(3), or (4), not more than 3 months after the judgement, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 4-902 (1), Utah Code of Judicial Administration provides:

> (1) In district court cases where there is a question concerning the support, custody or visitation of a child and a petition concerning abuse, dependency, or neglect of the same child has been filed in juvenile court, the district court shall certify the question of support, custody or visitation to the juvenile court for determination.

STATEMENT OF THE CASE

Nature of the Case

Plaintiff appeals from the lower court's final appealable order granting defendants' Rule 12(b)(6) Motion to Dismiss the Complaint for failure to state a claim upon which relief may be granted (R. 182-87).

Course of the Proceedings and Disposition Below

Plaintiff filed a civil Complaint against defendants Catherine Wheeler and Daniel Larsen on March 14, 1997, claiming three causes of action: (1) an independent action for fraud on the court pursuant to Rule 60(b) seeking to set aside a Decree of Adoption entered on April 27, 1995; (2) an action seeking to enforce or establish visitation rights with defendants' two children; and (3), an action seeking to terminate defendants' parental rights (R. 1-10). Defendants filed a Motion to Dismiss

for failure to state a claim pursuant to Rule 12(b)(6), Utah Rules of Civil Procedure (R. 28-39). Plaintiff responded by filing a motion for an order certifying the matter to juvenile court and for leave of court to amend the Complaint (R. 46-48). The proposed Amended Complaint deleted the cause of action seeking to terminate parental rights and added a cause of action for specific performance and breach of contract seeking ongoing visitation rights (R. 70-80). Meanwhile, plaintiff filed a separate action in Third District Juvenile Court again seeking to terminate defendants' parental rights (R. 172-74). After reviewing the relevant documents and conducting a hearing on the matter, the lower court entered Findings of Fact, Conclusions of Law and an Order granting defendants' Motion to Dismiss (R. 175-76, see Minute Entry attached as Addendum B; 182-87). In sum, the lower court ruled that plaintiff consented to the adoption, that the Decree of Adoption terminated plaintiff's parental rights and that plaintiff has no standing to seek visitation rights (Id.). The lower court further denied plaintiff's Motion to Amend the Complaint on the basis that it does not allege any legally enforceable contract right to visitation (Id.). Because the matter was dismissed, the lower court did not address plaintiff's Motion to Certify the Case to Juvenile Court (Id.).

STATEMENT OF FACTS

Plaintiff and defendant Catherine Wheeler were divorced on April 14, 1989 (R. 11-16). Two children were born during the marriage, Baron and Trevor Wheeler Gamble, ages 3 and 2

respectively at the time (R. 12, 30). Defendant Wheeler was awarded permanent care, custody and control of the children subject to plaintiff's reasonable rights of visitation (R. 12 at ¶ 2). Plaintiff was further ordered to pay $200.00 per month per child, for a total support obligation of $400.00 per month (R. 13 at ¶ 3). Plaintiff failed to maintain his court ordered child support obligation and became seriously delinquent in his child support payments (R. 2 at ¶¶'s 8-9).

Defendants Catherine Wheeler and Daniel Larsen were married on March 1, 1991 (R. 71 at ¶ 7). On February 24, 1995, defendant Larsen filed a petition in the Third Judicial District Court seeking to adopt the children (R. 2 at ¶10). Plaintiff agreed to the adoption and signed a document on March 20, 1995 entitled "Certified Consent of Father Giving up Rights to Children Conceived or Born Within Marriage and Waiver of Notice" (R. 40-43; attached as Addendum C). Thereafter, Judge J. Dennis Frederick entered a Decree of Adoption on April 27, 1995, forever terminating plaintiff's parental rights and duties (R. 17-18; attached as addendum D).

Approximately two years later, on March 14, 1997, plaintiff instituted the present action seeking to set aside the adoption, or in the alternative, to establish or enforce visitation rights (R. 1-10).

SUMMARY OF THE ARGUMENT

Two years after the adoption, plaintiff seeks to revoke his consent and set aside the adoption decree. He argues that the

concept of an open adoption should be applied retroactively in this case, thus allowing him to retain visitation rights with the adopted children without any related duty of support. The lower court correctly rejected plaintiff's attempt to rescind his unequivocal consent to the adoption and further ruled that adoption decree forever terminated all rights and duties of plaintiff with regard to the adopted children.

Plaintiff further seeks to set aside the adoption decree on the basis of fraud on the court under Rule 60(b), Utah R. Civ. P. He claims that a letter accompanying the adoption papers constitutes an agreement for ongoing visitation rights. He argues that the consent and adoption decree were fraudulent because defendants did not submit the letter to the adoption court. After carefully reviewing the language of the consent and adoption decree, the lower court accurately concluded that the plain contract language of the adoption papers clearly and unequivocally terminated all of plaintiff's rights and duties. The ambiguous reference to visitation in the letter does not create any legally enforceable right when read in conjunction with the plain and obvious language of the accompanying adoption papers which were acknowledged and signed by plaintiff. Plaintiff had the responsibility to protect his own rights and had an equal opportunity to present information to the adoption court. Most importantly, defendants did not prevent plaintiff from presenting information to the adoption court and no false representations were made by defendants to the adoption court.

Thus, the finality of the adoption decree must be preserved and not set aside simply because plaintiff wants visitation rights with the adopted children.

Finally, plaintiff seeks to undo the lower court's ruling and to certify the matter to juvenile court. After filing this matter in district court, he later filed a petition in juvenile court which he now claims has exclusive original jurisdiction. Although the lower court did not rule on this issue below, plaintiff's argument should be rejected for three reasons. First, plaintiff continued to pursue this matter in the lower court and did not voluntarily dismiss his Complaint. Second, the district court had jurisdiction to consider plaintiff's independent action under Rule 60(b) seeking to set aside the adoption decree. The only issue before the lower court was whether the adoption decree should be set aside, not whether plaintiff should be awarded custody or visitation rights. Lastly, the Utah Supreme court has recognized that a mere allegation in a petition filed in juvenile court does not divest the district court of jurisdiction or prove that the juvenile court has exclusive original jurisdiction over matters of custody or visitation.

ARGUMENT

POINT I

PLAINTIFF CONSENTED TO THE DECREE OF ADOPTION AND THE TERMINATION OF HIS PARENTAL RIGHTS

Two years after the adoption, plaintiff sought to undo the Decree of Adoption and to reestablish ongoing visitation rights

(R. 1-10). The lower court granted defendants' Rule 12(b)(6) Motion to Dismiss for the reason that both plaintiff's consent and the court's Decree of Adoption clearly and unequivocally terminated plaintiff's parental rights (R. 175-76, 182-87). No provision for continued visitation was made in either the consent or the decree (Id.).

On appeal, plaintiff now suggests this Court should embrace the concept of "open adoption" and grant him post-adoption visitation rights. While the concept of "open adoption" may have some merit in evaluating the best interests of a child in the context of an ongoing adoption proceeding, the concept has no application in this case.

A. THE CONSENT DID NOT PROVIDE FOR POST-ADOPTION VISITATION RIGHTS

First, plaintiff's consent to the adoption relinquishes all of his parental rights and duties, without reservation (R. 40-42). Plaintiff signed the document on March 20, 1995, plainly entitled "Certified Consent of Father Giving up Rights to Children Conceived or Born Within Marriage and Waiver of Notice" (emphasis added) (Id., attached as Addendum C). The language of the consent is clear and absolute. An obvious warning appears in bold capital letters at the top of the consent document as follows:

> **DO NOT SIGN THIS DOCUMENT WITHOUT READING IT. IF YOU HAVE ANY QUESTIONS WHATSOEVER, MAKE SURE YOU CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS DOCUMENT. BY SIGNING THIS DOCUMENT, YOU ARE GIVING UP YOUR RIGHTS AS A PARENT. YOU CANNOT REVOKE THE CONSENT TO YOUR CHILDREN'S ADOPTION ONCE YOU SIGN THIS DOCUMENT.**

(R. 40-42)(emphasis in original). The document further provides at paragraph 7 as follows:

> [Plaintiff] understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. § 78-30-11 (1990, as amended), he will be released from all future parental duties toward and all future responsibilities for the adopted children, and have no further rights with regard to the children.

(R. 41 at ¶ 7)(emphasis added). The finality of the consent was further explained in paragraph 8 as follows:

> [Plaintiff] understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. § 78-30-9 (1990, as amended), that the children will be adopted by the petitioner and the children shall be regarded and treated in all respects as the children of the petitioner and Catherine Wheeler.

(Id. at ¶ 8)(emphasis added). The legal significance of the consent was noted in paragraph 10 as follows: "[Plaintiff] has had the opportunity to consult with and obtain the advice of an attorney of his choice." (R. 42 at ¶ 10)(emphasis added). Paragraph 12 provides that plaintiff "consents to the granting of a petition for adoption and consents to the adoption by petitioner of the children." (Id. at ¶ 12). Finally, the consent certifies that plaintiff "has read and understands the foregoing consent to adoption, and signs it freely and voluntarily." (Id. at 14). Plaintiff's claim for post-adoption visitation rights is repudiated by his unequivocal consent to terminate his parental rights thus allowing the adoption decree to be granted without reservation.

B. THE ADOPTION DECREE DID NOT PROVIDE FOR POST-ADOPTION VISITATION RIGHTS

Secondly, the Decree of Adoption entered by Judge J. Dennis Frederick on April 27, 1995, is likewise clear and unequivocal that "all rights and interests of [plaintiff] with regard to [the children] are hereby and forever terminated" (R. 18 at ¶ 4) (emphasis added). Again, no reservation or provision is made for a so-called "open adoption" which would allow future contact or visitation. The concept of an "open adoption" was never considered by the parties, never agreed to between the parties, never presented to Judge Frederick and not included in the adoption decree (Id.).

C. THE LOWER COURT DID NOT RULE ON THE CONCEPT OF "OPEN ADOPTION"

Third, plaintiff's Complaint and proposed Amended Complaint in the lower court do not mention the concept of an "open adoption", much less allege a cause of action to enforce any agreement between the parties for an "open adoption" (R. 1-10, 70-80). Accordingly, the lower court did not rule on the advisability of this new legal concept of open adoption in Utah (R. 182-87).

Plaintiff raises the issue of open adoption on appeal in a belated attempt to persuade this Court to grant post-adoption visitation rights. In essence, plaintiff requests this Court to amend the Decree of Adoption more than two and one-half years later. This Court should reject plaintiff's invitation to adopt such a new legal concept which was not agreed to between the

parties, included in the adoption decree or pled in the Complaint reviewed by the lower court. See State v. Brown, 856 P.2d 358, 359 (Utah App. 1993)(As a general rule, appellate courts will not consider issues raised for the first time on appeal).

D. AN OPEN ADOPTION IS INAPPROPRIATE ABSENT THE PARTIES AGREEMENT AND THE ADOPTION COURT'S APPROVAL

Finally, the cases and authorities referenced by plaintiff do not support his claim that "open adoption" or "post adoption visitation" is appropriate in the present case.[2] Plaintiff cites

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[2] Plaintiff cites several cases from other jurisdictions to support his proposition that "open adoption" should be approved by this court and imposed in this case. A brief review of these cases reveals that an open adoption is not a viable option in this case.

Plaintiff's relies on Morse v. Daly, 704 P.2d 1087 (Nev. 1985), in which the Nevada Supreme Court held it was within proper exercise of lower court's equitable powers to condition an adoption decree upon the continued jurisdiction of the court to consider future requests for visitation privileges by a child's stepgrandmother. Id. at 1089. The court reasoned that such a condition was not precluded by statute or case authority. Id. Contrary to plaintiff's representation, the Morse court did not affirm an open adoption decree or grant post-adoption visitation for a natural parent. The Morse court expressly rejected an "open adoption" claim "because the parties have not agreed to continuing visitation." Id. at n. 2 (emphasis added). The court further explained that an "open adoption"

> 'occurs when, prior to the adoption, it is agreed in writing that the child will have continuing contact with one or more members of his or her biological family after the adoption is completed... The court would approve the agreement if it could be shown that this was in the child's best interest. The agreement would then be incorporated into the final order of adoption. The court would maintain jurisdiction as in a divorce proceeding and could modify the agreement if necessary for the child's welfare.'

Id. (quoting Amadio & Deutsch, Open Adoption; Allowing Adopted Children to "Stay in Touch" With Blood Relatives, 22 J.Fam.L. 59, 60061 (1983)(footnote omitted in original, emphasis added)).

In the present case, the parties did not enter into a written agreement for an open adoption, the court did not approve or incorporate such an agreement into the Decree of Adoption, and the court did not maintain jurisdiction to modify the Decree of

a Utah case where the foster parents sought to adopt an Indian child who had been living with them outside the reservation. In the Matter of Adoption of Holloway, 732 P.2d 962 n. 11 (Utah 1986). Having found that the Indian courts had exclusive jurisdiction over the matter, Justice Zimmerman dropped a footnote suggesting that an innovative approach to adoption, called an "open adoption", may be suited to the facts of the case. Id. Justice Zimmerman did not mention post-adoption visitation, but merely explained that the fundamental concept of an open adoption is to allow some communication between the adoptive and natural parents and, when appropriate, to permit communication between the natural parent and the child as the child grows up. Id. He suggested that the child could remain with his adoptive parents, but also allow the tribe to teach the child about his Indian heritage. Id. Justice Zimmerman

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Adoption. Because an open adoption did not occur, this Court should reject plaintiff's attempt to modify the Decree of Adoption by creating new law in Utah.

The Utah cases cited by plaintiff are also inapplicable. See Gribble v. Gribble, 583 P.2d 64, 68 (Utah 1978)(Remanding divorce action to trial court to determine whether the stepparent stands in loco parentis to his stepchild, whether it is in child's best interest to allow stepparent a right of visitation, and whether visitation rights should be conditioned upon stepparents agreement to pay a proper share of child support); Workman v. Workman, 498 P.2d 1384, 1386 (Okla. 1972)(Because stepfather assumed status and obligation in loco parentis, two deceased children could not maintain wrongful death action against stepfather for negligent operation of a vehicle); State of Utah In Re J.W.F., 799 P.2d 710 (Utah 1990) (In a case where the natural mother's parental rights had been terminated, her husband had standing to seek custody of a child born into his marriage, although the child was not his biological offspring, since husband was child's stepparent and husband had legal obligation of support prior to dissolution of marriage).

cautioned that his comment was merely an observation and recognized that it was not the court's matter to decide on appeal. Id.

Unlike the circumstances in Holloway, the adoption in the present case was finalized more than two and a half years ago. Judge Frederick was required by statute to determine whether the adoption was in "the best interest[s] of the [children]." Utah Code Ann. § 78-30-1.5 (1990). Plaintiff's unequivocal consent to the adoption represents his agreement with Judge Frederick that it was in the best interests of the children that his parental rights be terminated and that he be released from "all future parental duties toward and all future responsibilities for the adopted children, and have no further rights with regard to the children." (R. 40 at ¶ 7). Plaintiff further represented and agreed that it was in the best interests of the children to be adopted by defendant Larsen and that "the children shall be regarded and treated in all respects as the children of [Mr. Larsen] and Catherine Wheeler." (R. 40 at ¶ 8).

Nowhere in the adoption proceedings before Judge Frederick did plaintiff seek to preserve any parental rights or visitation privileges. The final entry of the Decree of Adoption on April 27, 1995, precludes plaintiff's attempt to obtain an "open adoption" or to establish post-adoption visitation. Because the concept of open adoption was never agreed to between the parties, much less considered or ruled upon by the lower court, this court need not consider the applicability of open adoption in this

appeal.[3] To rule otherwise would disrupt the finality of any adoption decree in Utah and subject adoptive parents to the unwanted risk of having their adoption set aside or reviewed for application of the open adoption concept.

POINT II

THE ADOPTION DOCUMENTS ARE CLEAR AND UNEQUIVOCAL THAT PLAINTIFF'S PARENTAL RIGHTS WERE FOREVER TERMINATED

A. THE COMPLAINT DOES NOT ALLEGE A FRAUD UPON THE COURT

Plaintiff's attempt to set aside the adoption decree is premised upon the language in Rule 60 (b), Utah Rules of Civil Procedure, which provides as follows: "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court." The Utah Supreme

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[3] Notably, plaintiff did not timely file a motion before Judge Frederick seeking to challenge or set aside the adoption decree under Rule 60(b), Utah Rules of Civil Procedure. A motion under Rule 60(b) "shall be made within a reasonable time and for reasons (1),(2),(3), or (4), not more than 3 months after the judgement, order, or proceeding was entered or taken." Id. In Maertz v. Maertz, 827 P.2d 259, 262 (Utah App. 1992), this Court held that a plaintiff's action to set aside an adoption decree, brought three and one-half years after the adoption order was granted, was not brought with a "reasonable time" under Rule 60(b) of the Utah Rules of Civil Procedure. This Court explained that what constitutes a reasonable time depends upon the fact of each case, considering such factors as the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties, Id. at 261, (citing, Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981).

Instead, this case arises out of an independent action under Rule 60(b), Utah Rules of Civil Procedure, in which plaintiff seeks relief from Judge Frederick's adoption decree. Therefore, the only issue on appeal is whether the lower court properly denied plaintiff's attempt to set aside the adoption decree, not whether an open adoption should be granted in the adoption case.

Court recognized such independent actions in St. Pierre v. Edmonds, 645 P.2d 615 (Utah 1982). In St. Pierre, an ex-wife sought to set aside the property distribution in a divorce decree on the basis of duress. The court held that Rule 60(b) expressly preserves a court's power to entertain an independent action to relieve a party from a judgment or decree on the ground it was obtained by fraud. To justify setting aside a divorce decree, the court defined fraud as "[a]n intentional act by a party in a divorce action which prevents the opposing party from making a full defense...." Id. at 619.[4] The court ruled that the alleged use of harassment, threats of bodily harm, physical abuse and intimidation forcing plaintiff to sign the divorce settlement documents was sufficient to state a claim for duress.

In the present case, plaintiff's Complaint alleges that the adoption decree was based upon fraud and should therefore be set aside. Unlike the plaintiff in St. Pierre, he does not allege

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[4] "Fraud upon the court" has been further defined by the United States Supreme Court as "a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." Hazel-Atlas Glass Company v. Hartford Empire Co., 322 U.S. 238, 246 (1944). Such fraud has also been described as fraud that "does or attempts to subvert the integrity of the court itself or that is perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Wright, Miller & Kane, Federal Practice & Procedure, Civ.2d § 2870. Examples of fraud upon the court include bribery of a judge, or counsel engaging in a conspiracy to produce fabricated evidence. No such fraud is alleged in plaintiff's Complaint.

fraud by duress.[5] Instead, he claims that the consent for adoption was based upon the condition that he could continue visitation with the adopted children. In other words, he maintains that the consent and adoption decree do not accurately reflect his agreement and understanding. Thus, this case hinges upon the question of whether plaintiff is bound by the explicit terms of the consent and the adoption decree.

B. AN ADOPTION AGREEMENT IS INTERPRETED UNDER PRINCIPLES OF CONTRACT LAW

The Utah Supreme Court has recognized that an agreement to adopt is considered a contract. In Re Adoption of D, 252 P.2d 223, 228 (Utah 1953). A parent's consent to adoption, once voluntarily given, and acted upon by the adopting parents, cannot be withdrawn without good cause. Id. After acceptance, such "a contract is enforceable against the adopting parents and ought to be enforceable by them." Id. at 229; see also In Re Adoption of K, 465 P.2d 541, 543 (Utah 1970)("Agreements of adoption are merely contractual arrangements and are entitled to be enforced the same as are all other types of contract except as the welfare of the child might otherwise require.). In addition, the doctrine of estoppel,[6] and other principles of equity, "would

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[5] While plaintiff asserts that threats of civil and criminal penalties for child non-support was a factor, he does not assert that his consent was involuntary. Nor does he claim that he was induced to sign the consent by use of harassment, threats of bodily harm, physical abuse or intimidation as was the case in St. Pierre.

[6] Although not presented to the lower court, this Court should find that plaintiff is barred by the doctrine of judicial estoppel from disputing the clear language in his Certified

preclude a court from assisting appellant to regain the custody of the child." Id.

The Utah legislature has likewise determined that a consent to adoption becomes an irrevocable contract at the moment it is signed. Utah Code Ann. § 78-30-4.20 (1995), provides that an adoption "consent or relinquishment is effective when it is signed and may not be revoked."[7] Utah law further provides that

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Consent to the effect that he understood and voluntarily relinquished all rights and duties regarding the adopted children. Weber v. Snyderville West, 800 P.2d 316, 320 (Utah App. 1990), cert. denied, 815 P.2d 241 (Utah 1991)(Appellate court may affirm the lower court on any proper ground). The principle of judicial estoppel prevents a party from seeking relief by contradicting his own sworn statements in a judicial proceeding. See Weise v. Weise, 699 P.2d 704 (Utah 1985) (Durham, J. dissenting). Judicial estoppel is based upon a strong and independent public policy, namely, the need to uphold the sanctity of oaths and the integrity of the judicial process. See Salt Lake City v. Silver Fork Pipeline, 913 p.2d 731, 734 (Utah 1995), (citing Weise v. Weise, 699 P.2d at 704-05 (Durham, J.,dissenting)). Unlike equitable estoppel, judicial estoppel does not require prejudice to the adverse party. Weise, 699 P.2d at 705. This principle was discussed in an analogous case where Justice Durham wrote that a party should be judicially estopped from contesting paternity after the party signed a divorce stipulation and agreement representing that he was the father of the child. Id. at 706. Likewise, plaintiff should be judicially estopped from contesting the adoption decree after he signed the Certified Consent representing that he relinquished all parental rights.

[7] This Court has previously noted that the Utah Legislature enacted a new adoption act in 1995 recognizing that there is "'no practical way to remove all risk of fraud or misrepresentation in adoption proceedings.'" Matter of Adoption of W, 904 P.2d 1113 n. 9 (Utah App. 1995)(quoting, Utah Code Ann. § 78-30-4.15(3) (1995). As a matter of public policy, the legislature determined that an unmarried biological father has the primary responsibility to protect his own rights in adoptive proceedings and that the burden of fraud must be borne by him. Id. Under the new adoption statute, a fraudulent representation is not a basis to set aside an adoption decree. Utah Code Ann. § 78-30-4.15(2) (1995)

after an adoption decree is entered by a court, the birth parent's rights are completely terminated. See Utah Code Ann. § 78-30-11 ("The birth parents of an adopted child are, from the time the final decree of adoption is entered, released from all parental duties toward and all responsibilities for the adopted child, and have no further rights with regard to that child."). These statutory provisions are consistent with Utah case law recognizing a strong need for finality regarding the adoption of children establishing new family relationships.[8]

Recognizing that plaintiff's consent to the adoption was a contract, the lower court analyzed the Certified Consent and Decree of Adoption under principles of contract law (R 185). When a court is asked to interpret a contract, it must first look to the four corners of the agreement to determine the intentions of the parties. Ron Case Roofing v. Bloomquist, 773 P.2d 1382, 1385 (Utah 1989). It is a basic rule of contract interpretation that the intent of the parties is to be determined from the writing itself, with each provision being considered in relation to all others. Plateau Mining Co. v. Utah Div. of State Lands & Forestry, 802 P.2d 720, 725 (Utah 1990). The plain meaning rule applies to preserve the intent of the parties and to protect the

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[8]See Maertz v. Maertz, 827 P.2d 259 (Utah App. 1992)("[F]rom strictly a humanitarian standpoint, there must be an end to the emotional stress and strain that is involved in the natural parents' attempt to regain custody of a child. The strain is particularly acute to the adoptive child itself, who may have established strong bonds of affection and love for the adoptive parents, and to the adoptive parents who must suffer the spectre of losing their child.");

agreement from judicial revision. Hal Taylor Assocs. v. Unionamerica, Inc., 657 P.2d 743, 749 (Utah 1982). When the meaning of a contract is clear and unambiguous, extrinsic evidence is generally not admissible to explain the intent of the parties and a court may interpret the contract as a matter of law. Plateau Mining Co. v. Utah Div. of State Lands & Forestry, 802 P.2d at 725; Faulkner v. Farnsworth, 665 P.2d 1292, 1293 (Utah 1983). To be ambiguous, both parties' interpretations must be contrary and both must be tenable. See, e.g., Grow v. Marwick Dev., Inc., 621 P.2d 1249, 1252 (Utah 1980).

C. THE LOWER COURT PROPERLY INTERPRETED THE PLAIN LANGUAGE OF THE CONSENT AND ADOPTION DECREE

In the present case, the lower court carefully reviewed the language of the consent and the adoption decree (R. 182). In its findings of fact, the court noted the following language:

> 3. The Certified Consent provides a warning at the top of the document as follows:
>
> **DO NOT SIGN THIS DOCUMENT WITHOUT READING IT. IF YOU HAVE ANY QUESTIONS WHATSOEVER, MAKE SURE YOU CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS DOCUMENT. BY SIGNING THIS DOCUMENT, YOU ARE GIVING UP YOUR RIGHTS AS A PARENT. YOU CANNOT REVOKE THE CONSENT TO YOUR CHILDREN'S ADOPTION ONCE YOU SIGN THIS DOCUMENT.**
>
> 4. Paragraph 7 of the Certified Consent provides: [Plaintiff] understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. § 78-30-11 (1990, as amended), he will be released from all future parental duties toward and all future responsibilities for the adopted children, and have no further rights with regard to the children.
>
> 5. Paragraph 8 of the Certified Consent of Father provides: [Plaintiff] understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. § 78-30-9 (1990, as amended), that the children will be adopted by the petitioner and the children shall be regarded and treated in all respects as the children of the petitioner and Catherine Wheeler.

6. Paragraph 10 of the Certified Consent of Father provides:

> [Plaintiff] has had the opportunity to consult with and obtain the advice of an attorney of his choice."

7. The Decree of Adoption entered on April 27, 1995 by the Honorable J. Dennis Frederick provides, at paragraph 4: "All rights and interests of Gentry Gamble with regard to Trevor and Baron are hereby and forever terminated."

(R. 183-84). Based upon this language, the lower court concluded as a matter of law that "the language of the Certified and Decree of Adoption is clear and unequivocal. Plaintiff Gentry Gamble understood and agreed to relinquish all rights to the adopted children." (R. 185). The court further concluded that after the Decree of Adoption was granted on April 27, 1995, "all rights and interests of plaintiff with regard to these children were forever terminated." (Id.).

D. THE LETTER DOES NOT CREATE AN ENFORCEABLE RIGHT TO POST-ADOPTION VISITATION

The only evidence offered by plaintiff to refute the clear language of the consent was a letter from the law firm of Cohne, Rappaport & Segal which says among other things, "You may maintain the present visitation schedule with Trevor and Baron." The lower court found that when read in conjunction with the clear and unequivocal language of the Certified Consent and the Decree of Adoption, "the referenced letter does not create in plaintiff any legally enforceable right with regard to the adopted children." (Id. at ¶ 3). The court further explained that in light of the specific language of the accompanying adoption papers, the brief and ambiguous reference to visitation in the midst of the attorney's cover letter was not a contract

between the parties for post-adoption visitation (R. 185 at ¶ 4). As a practical matter, the court noted that the letter "does not define the visitation schedule, explain how the visitation schedule could be modified, provide an enforcement mechanism or preclude the defendants from terminating the visitation schedule." (R. Id.). Therefore, the court concluded that the defendants, as the parents of the children, could "terminate any contact between their children and plaintiff." (Id.).[9]

While the lower court's findings with regard to the language of the consent and the adoption decree may be reviewed by this Court de novo, the plain language of these adoption documents is not disputed by plaintiff. Nor are these documents subject to any other reasonable interpretation. The only reasonable

---

[9] After the adoption, defendants did permit their children to have contact with plaintiff, although it was not regular contact and it was not under the terms of any agreement. They reasoned that if the children desired some contact, and such contact was not harmful to the children, they would allow plaintiff to maintain contact as they deemed fit. Plaintiff falsely reported abuse by defendants in an apparent attempt to obtain custody or visitation. Plaintiff's report was investigated, determined to be unfounded and no juvenile court proceeding was instituted. Due to plaintiff's conduct, defendants determined that it was harmful to their family relationship to allow plaintiff any further contact. The children resent plaintiff's attempt to destroy their family relationship and no longer desire any further contact with plaintiff. As the childrens' sole parents, defendants have the right to make decisions regarding their children, including the decision whether their children should be permitted to spend weekends, holidays and special occasions in another person's home. They also have the related duties as parents to provide financial support, shelter, food, education, clothing etc. After all, that was the primary purpose of the adoption, to establish and maintain a single home with two loving parents that had already demonstrated their responsibility for properly supporting and raising their children.

interpretations from these documents are that; (1) plaintiff voluntarily relinquished his parental rights, (2) the adoption court accepted the consent, (3) the adoption court found that the adoption was in the best interest of the children, and (4) plaintiff's parental rights were terminated forever. After the adoption was final, plaintiff had no further rights to visitation pursuant to any statute, court order or contractual agreement.

Plaintiff now argues that he would not have consented to the adoption if he had known that he would no longer enjoy his parental rights (see plaintiff's brief at p. 25). Incredibly, he claims it was his understanding that his consent to adoption provided him the best of both worlds, i.e., he retained his parental rights to visitation but was relieved from his parental duties of support.[10] Despite that fact that plaintiff read, understood and signed the consent, he claims that he had no control over the information provided to Judge Frederick prior to the adoption (Id.). Because defendants did not submit the above referenced attorney's letter to the adoption court, he claims that a fraud was perpetrated upon the court. Had the letter been disclosed to Judge Frederick, he asserts that the adoption would not have been granted.

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[10] Defendants would not have petitioned for the adoption if plaintiff were allowed to retain his visitation rights, yet escape his court ordered child support duty, a duty he had already breached.

E. NO FRAUDULENT REPRESENTATIONS WERE MADE TO THE ADOPTION COURT

Plaintiff's claims and arguments are disingenuous. He had an equal opportunity to offer any information to the adoption court. After all, he was a necessary party to the adoption case. As a party, the only information he offered to the adoption court was his signed consent. After reading the consent, and having had an opportunity to seek the advice of counsel, plaintiff could have simply refused to sign the consent document. He could also have demanded that the consent document be redrafted by defendants to clearly preserve his purported understanding that he retained post-adoption visitation rights. Instead, he signed the document which clearly relinquishes all parental rights, he did not offer any other information to the adoption court, he did not contest the adoption, and he did not seek to undo the adoption until two years later.[11]

Under these facts, it would be a stretch of contract jurisprudence to infer an entire open adoption agreement into a single, gratuitous ambiguous sentence in an attorney's letter which was accompanied by the Petition for Adoption and the clear and unequivocal Consent for Adoption (R. 19). In sum, no contract for visitation was entered into between the parties.

---

[11] See In the Matter of Baby Boy Doe, 894 P.2d 1285 (Utah App. 1995)(Where a mother signed a consent to adoption, she could not later revoke her consent after that date); In Re Adoption of Maestas, 531 P.2d 492 (Utah 1975)(Where the evidence fully justified the trial court in concluding that a mother's consent had been given willingly, knowingly and voluntarily, the appellate court should not reverse the trial court in that regard).

The only agreement between the parties was the consent for adoption which forever terminated plaintiff's visitation rights.

Most importantly, defendants made no fraudulent representations to the adoption court and plaintiff was not forced to sign the consent under duress.[12] Unlike the divorce case in St. Pierre v. Edmonds, 645 P.2d at 619, defendants did not engage in any intentional conduct which prevented plaintiff "from making a full defense" in the adoption matter. To the contrary, plaintiff had every opportunity to participate in the adoption proceedings, obtain legal advice regarding his parental rights and assure that the consent document fully embodied his understanding with regard to his future rights. Plaintiff was sufficiently warned that if he signed the consent document, he was giving up his rights as a parent and he could not revoke his consent later (R. 40). Under these circumstances, this Court should affirm the lower court's ruling that plaintiff's Complaint and proposed Amended Complaint fail to state a claim to support an independent action to set aside the adoption decree for fraud upon the court.

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[12] The only fraud being perpetrated in this case is plaintiff's claim that he somehow retained his parental rights after he; (1) failed to support his children for years; (2) consented to adoption in order to avoid his child support obligation; (3) signed a plainly worded consent document that relinquished his parental rights; (4) failed to contest the adoption or present any further evidence; (5) and nullified the terms of visitation and support in the divorce decree.

POINT III

THE LOWER COURT DID NOT ERR IN DECLINING TO RULE ON PLAINTIFF'S MOTION TO CERTIFY THE CASE TO JUVENILE COURT

Plaintiff argues that the lower court should have certified the entire case to the juvenile court after he filed a separate petition to terminate defendants' parental rights in juvenile court. He relies upon Rule 4-902, Utah Code of Judicial Administration and Utah Code Ann. § 78-3(a)-17 (1953 as amended) which generally require that a district court should certify to the juvenile court questions concerning child support, custody or visitation where a petition has been filed in the juvenile court concerning abuse, dependency or neglect. Plaintiff's argument should be rejected for three reasons.

First, after filing his petition in juvenile court, plaintiff could have voluntarily dismissed his Complaint in district court under Rule 41(a)(1), Utah Rules of Civil Procedure. Instead, plaintiff sought leave to file an Amended Complaint and continued to pursue his action in district court. In other words, plaintiff chose to seek relief in both courts.

Second, the district court case before Judge Brian did not involve a question concerning the support, custody or visitation of a child. As discussed above, plaintiff filed an independent action under Rule 60 (b) to set aside the adoption decree. The only question before the district court was whether the adoption decree should be set aside, not whether plaintiff should be awarded custody or visitation. This court has noted that even if

a natural parent brings "an independent action against the adoptive parents for alleged fraud or misrepresentation, it is unclear what remedy [he] could pursue. Even were [he] to prevail on such an action, [he] has no clear right to reinstatement of [his] parental rights or to otherwise undo the adoption" In the Matter of Baby Boy Doe, 894 P.2d 1285, 1288 n. 6 (Utah App. 1995).

Finally, the Utah Supreme Court has recognized that the juvenile court was created by statute and only has jurisdiction in those cases specified therein. In Re State in Interest of Valdez, 504 P.2d 1372, 1374 (Utah 1973). In rejecting a similar claim, the court explained that a mere allegation in a petition that a parent is unfit does not prove that fact, nor does it prove that a child is "neglected", nor does it prove that the juvenile court has exclusive original jurisdiction with respect to custody. Id. at 1374-75, (citing In Re O'Hare's Guardianship, 9 Utah 2d 156, 427 (1959). Where the juvenile court's findings were insufficient to establish neglect, the matter was determined to be a conventional custody dispute between maternal and paternal relatives and was within the jurisdiction of the district court.

In the present case, plaintiff elected to file his lawsuit in district court. After defendants filed a motion to dismiss, plaintiff instituted a second action in juvenile court. Whether plaintiff was court shopping, judge shopping or simply trying to attack the adoption decree in two courts, the district court had

jurisdiction to consider plaintiff's independent action under Rule 60(b). Plaintiff should not be permitted to undo Judge Brian's ruling simply because he does not like the outcome of his lawsuit.

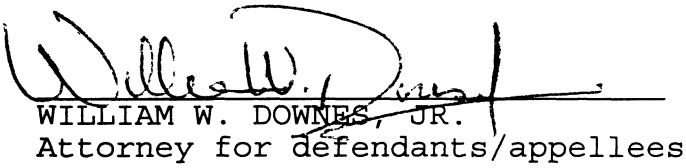
CONCLUSION

For the reasons above, defendants respectfully request this Court to affirm the lower court's grant of defendants' motion to dismiss plaintiff's complaint for failure to state a claim upon which relief may be granted. Defendants further request this Court to award costs and attorney fees to defendants on appeal.

REQUEST FOR ORAL ARGUMENT

Defendants request oral argument. Oral argument will materially assist the Court in understanding the procedural context, factual background and relevant law for the issues presented.

RESPECTFULLY SUBMITTED this 17 day of December, 1997.

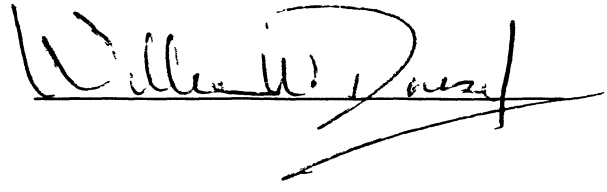


WILLIAM W. DOWNES, JR.
Attorney for defendants/appellees

CERTIFICATE OF SERVICE

I certify that I served by First Class Mail two copies of the **BRIEF OF APPELLEES** this 17 day of December, 1997, to the following:

Frederick N. Green
GREEN & BERRY
622 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Attorney for Plaintiff-Appellant



ADDENDA

ADDENDUM A

William W. Downes, Jr. (#0907)
WINDER & HASLAM, P.C.
175 West 200 South, Suite 4000
Post Office Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222

Attorneys for Defendants

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

GENTRY GAMBLE, Plaintiff, vs. DANIEL R. LARSEN and CATHERINE J. WHEELER, Defendants.	:	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER Civil No. 970901796 Judge Pat B. Brian

The above-captioned matter came before the court on the 9th day of May, 1997 before the Honorable Pat B. Brian, plaintiff appearing in person and through counsel, Frederick N. Green, and defendants appearing in person and through counsel, William W. Downes, Jr. The court reviewed plaintiff's Complaint, the Certified Consent of Father Giving up Rights to Children Conceived Within Marriage and the Decree of Adoption. Based thereon, and for good cause appearing, the court hereby enters its:

FINDINGS OF FACT

1. On February 24, 1995, Daniel R. Larsen filed a Petition in the Third Judicial District Court to adopt Trevor Wheeler Gamble and Baron Wheeler Gamble, the natural children of his spouse, Catherine J. Wheeler. In the Matter of the Adoption of Trevor B. Wheeler Gamble and Baron G. Wheeler Gamble, Third District Court Case No. 952900102AD (Judge J. Dennis Frederick).

2. On March 20, 1995, Gentry Gamble, the childrens' natural father, signed the Certified Consent of Father Giving up Rights to Children Conceived Within Marriage and Waiver of Notice.

3. The Certified Consent provides a warning at the top of the document as follows:

> DO NOT SIGN THIS DOCUMENT WITHOUT READING IT. IF YOU HAVE ANY QUESTIONS WHATSOEVER, MAKE SURE YOU CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS DOCUMENT. BY SIGNING THIS DOCUMENT, YOU ARE GIVING UP YOUR RIGHTS AS A PARENT. YOU CANNOT REVOKE THE CONSENT TO YOUR CHILDREN'S ADOPTION ONCE YOU SIGN THIS DOCUMENT.

4. Paragraph 7 of the Certified Consent provides:

> [Plaintiff] understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. Section 78-30-11 (1990, as amended), he will be released from all future parental duties toward and all future responsibilities for the adopted children, and have no further rights with regard to the children.

5. Paragraph 8 of the Certified Consent of Father provides:

> [Plaintiff] understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. Section 78-30-9 (1990, as amended), that the children will be adopted by the petitioner and the children shall be regarded and treated in all respects as the children of the petitioner and Catherine Wheeler.

6. Paragraph 10 of the Certified Consent of Father provides:

> [Plaintiff] has had the opportunity to consult with and obtain the advice of an attorney of his choice.

7. The Decree of Adoption entered on April 27, 1995 by the Honorable J. Dennis Frederick provides, at paragraph 4: "All rights and interests of Gentry Gamble with regard to Trevor and Baron are hereby and forever terminated."

8. Plaintiff's Complaint references a letter from the law firm of Cohne, Rappaport & Segal to plaintiff wherein plaintiff was advised: "You may maintain the present visitation schedule with Trevor and Baron."

9. The Complaint does not reference, nor did plaintiff present at oral argument, any other documents to further establish or define any ongoing visitation agreement between the parties.

10. Plaintiff sought leave of court to file an Amended Verified Complaint alleging an additional cause of action styled as "Specific Performance and Breach of Contract."

Plaintiff alleges the existence of contractual visitation rights that have been breached by the defendants.

Based upon the foregoing Findings of Fact, the court hereby makes and enters the following:

CONCLUSIONS OF LAW

1. Under principles of contract law, the language of the Certified Consent and the Decree of Adoption is clear and unequivocal. Plaintiff Gentry Gamble understood and agreed to relinquish all rights to the adopted children.

2. Pursuant to the Decree of Adoption granted on April 27, 1995, all rights and interests of plaintiff with regard to these children were forever terminated.

3. When read in conjunction with the clear and unequivocal language of the Certified Consent and Decree of Adoption, the referenced letter does not create in plaintiff any legally enforceable right with regard to the adopted children.

4. The visitation language in the attorney's letter is insufficient in light of the adoption papers to create a contract for post-adoption visitation. The attorney's letter does not define the visitation schedule, explain how the visitation schedule could be modified, provide an enforcement mechanism or preclude the defendants from terminating the visitation schedule.

5. As the natural parents of these children pursuant to the Decree of Adoption, defendants may terminate any contact between their children and plaintiff.

6. Plaintiff's First Cause of Action seeking to set aside the Decree of Adoption pursuant to Rule 60(b) of the Utah Rules of Civil Procedure should be dismissed with prejudice for failing to state a cause of action upon which relief may be granted.

7. Plaintiff's Second Cause of Action seeking to enforce or establish visitation with defendants' children should be dismissed with prejudice. In light of Judge Frederick's termination of plaintiff's parental rights with these children, plaintiff lacks standing to seek or enforce visitation rights after the Decree of Adoption became final on April 27, 1995.

8. Plaintiff's Third Cause of Action seeking to terminate defendants' parental rights pursuant to Utah Code Ann. Section 78-3(a)-401, et. seq., should be dismissed for lack of subject matter jurisdiction. The juvenile courts of this state have exclusive original jurisdiction over such actions.

9. Plaintiff's motion to amend the Complaint should be denied as futile since the Amended Complaint likewise fails to state a claim upon which relief may be granted for the reasons stated above.

ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendants' Motion to Dismiss the Complaint is granted.

2. Plaintiff's Motion to Amend the Complaint is denied.

3. Plaintiff's Complaint is dismissed with prejudice.

DATED this 27 day of June, 1997.

BY THE COURT:

Pat B. Brian, Judge

Approved as to form:

GREEN & BERRY

By _____
Frederick N. Green
Attorney for Plaintiff

ADDENDUM B

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

	:	MINUTE ENTRY
GAMBLE, GENTRY	:	
PLAINTIFF	:	CASE NUMBER 970901796 CV
	:	DATE 05/09/97
VS	:	HONORABLE PAT B BRIAN
	:	COURT REPORTER (NOT REPORTED)
LARSEN, DANIEL R	:	COURT CLERK BHY
DEFENDANT	:	

TYPE OF HEARING: MOTION TO DISMISS
PRESENT: PLAINTIFF DEFENDANT

P. ATTY. GREEN, FREDERICK N
D. ATTY. DOWNES, WILLIAM W

THIS MATTER IS BEFORE THE COURT FOR HEARING RE: DEFENDANT'S MOTION TO DISMISS. BOTH PARTIES ARE PRESENT WITH COUNSEL, AS SHOWN ABOVE. THE COURT HEARS ARGUMENT FROM BOTH COUNSEL.

THE COURT FINDS THAT THE NATURAL FATHER SIGNED A CONSENT TO ADOPTION ON 3/20/95. THE CONSENT CLEARLY STATED ON ITS FACE THAT ALL RIGHTS AND RESPONSIBILITIES OF THE NATURAL FATHER WERE PERMANANTLY TERMINATED. THE DECREE OF ADOPTION ALSO CLEARLY STATES THIS.

THE COURT FINDS THAT THERE WAS AN AGREEMENT RE: RELEASE BY NATURAL MOTHER OF ALL CLAIMS FOR CHILD SUPPORT ARREARAGES AND ONGOING CHILD SUPPORT, IN EXCHANGE FOR NATURAL FATHER'S SIGNING OF THE CONSENT TO ADOPTION.

THE COURT FINDS THERE IS ONE LETTER IN EVIDENCE BEFORE THE COURT TODAY THAT CONTAINS A BRIEF REFERENCE TO VISITATION FOR THE NATURAL FATHER. THE COURT FINDS THAT THIS IS TOO VAGUE FOR THE COURT TO ENFORCE.

THE COURT FINDS THAT THE PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED. THE DEFENDANT'S MOTION TO DISMISS (RELATING TO ALL THREE CAUSES OF ACTION) IS GRANTED. THE PLAINTIFF'S COMPLAINT IS DISMISSED WITH PREJUDICE.

THE PLAINTIFF'S MOTION TO AMEND COMPLAINT IS DENIED.

COUNSEL FOR DEFENDANTS IS TO PREPARE THE FINDINGS AND ORDER FROM TODAY'S HEARING AND DELIEVER A COPY TO OPPOSING COUNSEL FOR APPROVAL AS TO FORM, AND SUBMIT THEM TO THE COURT BY 5/23/97.

ADDENDUM C

Kevin J. Fife (Bar No. 5962)
COHNE, RAPPAPORT & SEGAL P.C.
Attorneys for Petitioner
525 East First South, Fifth Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone (801) 532-2666
Facsimile (801) 355-1813

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF	:	
THE ADOPTION OF:	:	**CERTIFIED CONSENT OF FATHER**
	:	**GIVING UP RIGHTS TO**
TREVOR B. WHEELER GAMBLE and	:	**CHILDREN CONCEIVED OR BORN**
BARON G. WHEELER GAMBLE,	:	**WITHIN MARRIAGE AND WAIVER**
	:	**OF NOTICE**
minor children.	:	
	:	Probate No. 952900102AD
	:	Judge J. Dennis Frederick

DO NOT SIGN THIS DOCUMENT WITHOUT READING IT. IF YOU HAVE ANY QUESTIONS WHATSOEVER, MAKE SURE YOU CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS DOCUMENT. BY SIGNING THIS DOCUMENT, YOU ARE GIVING UP YOUR RIGHTS AS A PARENT. YOU CANNOT REVOKE THE CONSENT TO YOUR CHILDREN'S ADOPTION ONCE YOU SIGN THIS DOCUMENT.

STATE OF UTAH)
:ss.
COUNTY OF SALT LAKE)

Gentry Gamble, being first duly sworn upon oath, or affirmation, deposes and states as follows:

1. He was born on September 19, 1957 at Bethesda, Maryland.

EXHIBIT "1"

000046

2. He is the biological father of the minor children sought to be adopted, to wit: Trevor B. Wheeler Gamble, who was born on the February 10, 1987, Baron G. Wheeler Gamble, who was born on July 24, 1985.

3. He understands that a verified petition for adoption of the minor children has been filed and that pursuant to Utah Code Ann. § 78-30-4.7 (1990, as amended). He must respond to the petition within thirty (30) days of service if he intends to contest the adoption, and hereby waives all notices pursuant to that section.

4. He is not under the influence of alcohol, drugs, medication, or any impairment of ability to understand and appreciate the significance of giving his consent to adoption.

5. He signs this consent freely and voluntarily and not under any duress, coercion, or force.

6. He understands that pursuant to Utah Code Ann. § 78-30-4.3 (1990, as amended), his consent to adoption is effective when signed and may not be revoked.

7. He understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. § 78-30-11 (1990, as amended), he will be released from all future parental duties toward and all future responsibilities for the adopted children, and have no further rights with regard to the children.

8. He understands that from the time the final decree of adoption is entered, pursuant to Utah Code Ann. § 78-30-9 (1990, as amended), that the children will be adopted by the petitioner and the children shall be regarded and treated in all respects as the children of the petitioner and Catherine Wheeler.

9. He understands that pursuant to Utah Code Ann. § 78-30-10 (1990, as amended), from the time the final decree of adoption is entered, the petitioner and the children shall sustain the legal relationship of parent and child and have all the rights and be subject to all the duties of that relationship.

10. He has had the opportunity to consult with and obtain the advice of an attorney of his choice.

11. He understands that pursuant to Utah Code Ann. § 78-30-4.2 (1990, as amended), that he is entitled to a copy of this consent.

12. He consents to the granting of a petition for adoption and consents to the adoption by petitioner of the children.

13. He waives notice of pendency of these adoption proceedings pursuant to Utah Code Ann. § 78-30-4.7(4) (1990, as amended).

14. He has read and understands the foregoing consent to adoption, and signs it freely and voluntarily.

15. He states upon his oath or affirmation that all statements contained in this consent are true and correct to the best of the knowledge of the undersigned.

DATED this 30th day of March, 1995.

Gentry Gamble

066642

CERTIFICATION

Pursuant to Utah Code Ann. § 78-30-4.2 (1990, as amended), I certify that on the 20th day of March, 1995, personally appeared before me, Gentry Gamble, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed above, and I certify to the best of my information and belief that said person has read and understood the foregoing consent and has signed it freely and voluntarily.

Where the above consent is signed by a birth mother, or the child sought to be adopted, or other person, I certify that I am a judge of a court that has jurisdiction over adoption proceedings, or a public officer appointed by that judge for the purpose of taking consents.

DATED this 20th day of March, 1995.

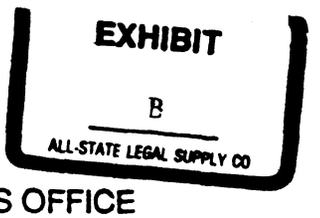
_____
JUDGE OR JUDICIALLY APPOINTED OFFICER

In the case of persons signing the above consent other than a birth mother or an adoptee, I sign as a notary public as follows:

Mindy Mildenhall
NOTARY PUBLIC
Residing at: Salt Lake County, Utah

NOTARY PUBLIC
Mindy Mildenhall
525 East 100 South
Salt Lake City, Utah 84102
My Commission Expires
July 22, 1995
STATE OF UTAH

ADDENDUM D



Kevin J. Fife (Bar No. 5962)
COHNE, RAPPAPORT & SEGAL P.C.
Attorneys for Petitioner
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Salt Lake City, Utah 84147-0008
Telephone (801) 532-2666
Facsimile (801) 355-1813

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE ADOPTION OF:	:	**DECREE OF ADOPTION**
TREVOR B. WHEELER GAMBLE and BARON G. WHEELER GAMBLE,	:	Probate No. 952900102AD
minor children.	:	Judge J. Dennis Frederick

The above-entitled matter came before the court for hearing on Thursday, the 27th day of April, 1995 at 9:00 a.m., the Honorable J. Dennis Frederick presiding, for consideration of the petition of Daniel R. Larsen to adopt Trevor B. Wheeler Gamble ("Trevor") and Baron G. Wheeler Gamble ("Baron"). Mr. Larsen was present in person and represented by counsel, Kevin J. Fife. Also present were Trevor and Baron and their natural mother, Catherine Wheeler. The court heard and considered the testimony of Petitioner, Trevor, Baron and Catherine Wheeler, considered the contents of the file and having heretofore made and entered its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This court has jurisdiction over the subject matter and parties to this action.

2. Because Trevor and Baron were brought into Utah by Catherine Wheeler and Gentry Gamble, their natural parents, the Interstate Compact on Placement of Children, Utah Code Ann. § 62A-4a-701 (1953, as amended), is not applicable to this adoption.

3. Daniel R. Larsen is declared to have adopted Trevor and Baron and from this date forward shall owe to them all the rights and responsibilities of a natural father to natural children and Trevor and Baron shall owe to Daniel Larsen the responsibilities of a child to their natural father.

4. All rights and interests of Gentry Gamble with regard to Trevor and Baron are hereby and forever terminated.

5. Trevor and Baron shall continue to be known as Trevor B. Wheeler Gamble and Baron G. Wheeler Gamble.

6. The Clerk of this Court shall make four (4) certified copies of this Decree of Adoption which shall be delivered to Petitioner's counsel, and then shall seal this file and not permit examination of the file by any person or party without further order of the court.

DATED this 27th day of April, 1995.

BY THE COURT:

J. Dennis Frederick
District Court Judge

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT SALT LAKE COUNTY. STATE OF UTAH
DATE April 27, 1995
DEPUTY COURT CLERK